

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Thuy Chan DAO
)	
John Randall WEST)	Art Unit: 2192
)	
Patent No. 7,478,365)	Attorney's Docket No. SYM-0004
)	
Issued: January 13, 2009)	Customer No. 77845
)	
For: METHOD AND SYSTEM FOR RULE-)	
BASED GENERATION OF)	
AUTOMATION TEST SCRIPTS)	
FROM ABSTRACT TEST CASE)	
REPRESENTATION)	

FILED VIA EFS
ON MARCH 5, 2009

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

MAIL STOP: OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* on the Issue Notification for United States Patent No. 7,478,365, states that the PTA is "**384**" days. Applicants hereby notify the United States Patent and Trademark Office that the PTA cited under the *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* is believed to be in error, and request that the PTA accorded to the above-referenced patent be **674** days.

REMARKS

Patent Term Adjustment

The total Patent Term Adjustment was noted as 384 days under the *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* on the Issue Notification for United States Patent No. 7,478,365.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only “overlap” if they occur on the same day.

In reviewing the Patent Term Adjustment History for Patent No. 7,485,704 as published in the PAIR system of the U.S. Patent and Trademark Office (USPTO), Applicants note that the 3-Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is January 13, 2007. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends with the Request for Continued Examination (RCE) filed on October 30, 2007. Applicants conclude that there is no “overlap” of time accumulated under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) during this period from January 13, 2007 and October 30, 2007.

Due to the summary judgment under *Wyeth vs. Dudas*, Applicants should be accorded 290 days (01/13/2007 to 10/30/2007) of Three Years Delay.

The USPTO calculation of USPTO Delay equals 585 days.

The Applicants' Delay equals 201 days

Thus, the total Patent Term Adjustment is 674 days in favor of Applicants.

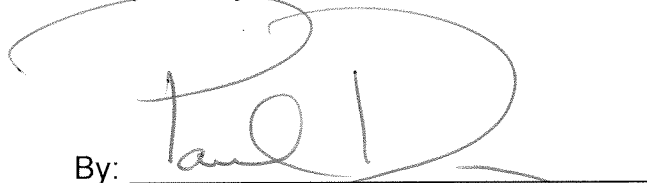
The Applicants request that the USPTO recalculate the Patent Term Adjustment in view of the above remarks, and accord Applicants 674 days of Patent Term Adjustment.

CONCLUSION

Applicants request that Patent Term Adjustment for U.S. Patent No. 7,478,365 be corrected to **674 days** instead of the 384 days indicated in *Determination of Patent Term Adjustment under 35 U.S.C. 154(b)* on the Issue Notification.

Applicants hereby authorize payment from Deposit Account No. **50-4634** (referencing Attorney's Docket No. **SYM-0004**) for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,


By: _____
Paul Davis (Reg. No. 29254)

Date: March 5, 2009

Goodwin Procter LLP
135 Commonwealth Drive
Menlo Park, CA 94025
Main T: 650-752-3100
Main F: 650-853-1038

LIBC/3545716.1
03/04/2009